



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,429	05/22/2000	Jeffery A. Konecke	1002-111	2363

7590 10/14/2005

James J. Schumann
FITCH, EVEN, TABIN & FLANNERY
9276 SCRANTON ROAD
SUITE 250
SAN DIEGO, CA 92121

EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
----------	--------------

1743

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/575,429	Applicant(s) KONECKE, JEFFERY A.	
	Examiner Lyle A. Alexander	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11, 12 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-12 and 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,4-8 and 19-26 are rejected under 35 U.S.C. 102(b,e) as being clearly anticipated by WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) respectively.

See the appropriate paragraph of the 3/31/05 Office action.

The new claim limitations "having a substantially flat front surface ... etc." is sufficiently broad to properly read on any substantially planar surfaces, such as taught by the above references.

Claims 1,3-8,16 and 19-26 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lappe et al. (USP 6,342,183).

See the appropriate paragraph of the 3/31/05 Office action.

The new claim limitations "having a substantially flat front surface ... etc." is sufficiently broad to properly read on any substantially planar surfaces, such as taught by the above references.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-3, 11-12 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) in view of Davis(USP 5,119,830).

See the appropriate paragraph of the 3/31/05 Office action.

The new claim limitations "having a substantially flat front surface ... etc." is sufficiently broad to properly read on any substantially planar surfaces, such as taught by the above references.

Claims 2,11-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lappe et al. (USP 6,342,183) in view of Davis (USP 5,119,830).

See the appropriate paragraph of the 3/31/05 Office action.

The new claim limitations "having a substantially flat front surface ... etc." is sufficiently broad to properly read on any substantially planar surfaces, such as taught by the above references.

Claims 3,16 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) in view of Lappe et al.(USP 6,342,183).

See the appropriate paragraph of the 3/31/05 Office action.

The new claim limitations "having a substantially flat front surface ... etc." is sufficiently broad to properly read on any substantially planar surfaces, such as taught by the above references.

Response to Arguments

Applicant's arguments filed 8/4/05 have been fully considered but they are not persuasive.

Applicants' state Lappe et al. teach a rear portion(32) bound by flat sides(34) where the sides are undulating to facilitate gripping. Applicants' state these undulating

sides cannot be read on the claimed "... substantially flat surfaces...". This new claim language is sufficiently broad to be properly read on any planar surface such as that taught by Lappe et al. Furthermore, Applicants' have even characterized Lappe et al. as having flat surfaces.

Applicants' state the undulating flat sides(34) would not facilitate visual observation therethrough. The method of intended use is of no patentable moment with respect to the pending apparatus claims. The Office maintains one could view the results through the sides(34) of Lappe et al.

Applicants' argue the primary references do not teach the limitations rejected under 35 USC 103 individually. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, Applicants' state if the combinations of the references as put forth by the Office in the 35 USC 103 rejections were made, they would not have resulted in the claimed invention. The Office maintains the 35 USC 103 rejections have provided sufficient and proper motivation to meet all of the pending claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1743

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander
Primary Examiner
Art Unit 1743

